

FCC MAIL SECTION
Federal Communications Commission

DA 97-2471

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DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-180
Table of Allotments,)	RM-9104
FM Broadcast Stations.)	9105
(Hawthorne, Wisconsin))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 19, 1997

Released: December 5, 1997

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 12 FCC Rcd 11967 (1997), issued in response to a petition filed by Bruce F. Elving ("Elving"), proposing the allotment of Channel 293A to Hawthorne, Wisconsin, as that community's first local broadcast service. Elving filed comments in response to the Notice. WTRW, Incorporated ("WTRW") filed a counterproposal.¹ Elving and WTRW filed reply comments.

2. In the Notice, Elving was requested to furnish sufficient information to support a finding that Hawthorne is a community for allotment purposes since it is not listed in the U.S. Census. Elving was also requested to provide specific information as to the social, economic cultural

¹ WTRW, licensee of Station WTRW-AM, Two Rivers, Wisconsin, counterproposed the allotment of Channel 293A at Superior, Wisconsin, as that community's third FM service. WTRW provided sufficient information showing that Superior qualifies as a community for allotment purposes, pointing out that the Town of Hawthorne, unlike Superior, relies upon Superior, Wisconsin, Duluth, Minnesota, and Douglas County for numerous community services. WTRW did verify its proposal and indicated that it would file an application for Channel 293A at Superior, Wisconsin, as it believes its counterproposal better serves the interests and needs of the public. WTRW did not, however, provide an engineering study or a set of coordinates for the allotment of Channel 293A at Superior. WTRW failed to establish a specific site for the use of Channel 293A at Superior which provides city grade coverage. WTRW merely requests that Channel 293A be allotted to Superior, Wisconsin, at the coordinates previously proposed for Hawthorne, Wisconsin. WTRW stated that from that site, Channel 293A will provide the required 100% city grade signal over Superior. WTRW argues that the allotment of Channel 293A at Superior will have the potential to serve substantially more area and population than an allotment at Hawthorne. A Commission engineering analysis indicates that the site specified for Hawthorne in the Notice (46-29-37 and 91-55-34), is 30 kilometers from the community of Superior and will not provide city grade coverage to any part of Superior. The counterproposal is not in compliance with Section 73.315 of the Commission's Rules. Therefore, based on the information before us, we find that the counterproposal filed by WTRW is technically deficient and must be dismissed.

or government indicia to determine whether Hawthorne is a community for allotment purposes. The Notice further requested that Elving specify whether it is requesting Hawthorne or the Town of Hawthorne, as the community of allotment for Channel 293A.² In response, Elving states that applications for Channel 293A should specify the township boundaries as no city known as Hawthorne exists despite the 1995 Edition of the Rand McNally Commercial Atlas listing Hawthorne, 100 people. According to Elving the Town of Hawthorne has a laundromat, Johnson Materials and Forest Products, Covered Wagon Restaurant and bar. There is also a Gas Station and convenience store, Hunter's Chariot Wheels (used cars) and nearby is Priem's Forest Products. There is an Assembly of God church, Whispering Pines Evangelical Free church, 1 Baptist church just across the town line and the Town of Hawthorne has a volunteer fire department. Elving points out that Hawthorne has a town clerk, post office and zip code, while schools are in the neighboring towns of Maple and Lake Negammon.

3. Based on the totality of the evidence submitted by Elving, we believe he has failed to establish that Hawthorne qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Hawthorne. See Mokelumne Hill, California, 4 FCC Rcd 7108 (1989) and Lupton, Michigan, 11 FCC Rcd 14428 (1996). While Elving has alleged that there are some local businesses, churches and community services, he has not specifically identified these entities with street addresses or shown that they are intended to serve the residents of Hawthorne, as opposed to the surrounding area. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991), and cases cited therein; Ellison Bay, Wisconsin, 9 FCC Rcd 2327 (1994), recon. denied, 10 FCC Rcd 8082 (1995). Elving has, in fact, stated that the channel should be allotted to Hawthorne Township instead of Hawthorne.³ We do acknowledge that Hawthorne can be located on a state map in Douglas County. Further, according to the 1995 edition of the Rand McNally Commercial Atlas and Marketing Guide ("Atlas"), Hawthorne does have a post office and is credited with a population of 100 people.⁴ However, we believe that the record in this proceeding is insufficient to find that Hawthorne is a community for allotment purposes. Therefore, we will not allot Channel 293A to Hawthorne.

² The Rand McNally Commercial Atlas, under Wisconsin, provides the following general note: Wisconsin minor civil divisions consist of 1,267 "towns" and 583 incorporated cities and villages. The Towns are legally incorporated units, similar to townships in other midwestern states. They may levy taxes, elect certain officials, and carry on limited governmental functions.

³ In response to the Notice, Elving expressed his preference for the allotment of Channel 293A at Hawthorne Town, in the event Hawthorne was found not to be a community for allotment purposes. As the Commission generally allots channels to communities and not to townships we find no justification to consider the allotment of Channel 293A at Hawthorne Town or Township. See Bear Creek and Pocono Pines, Pennsylvania, 12 FCC Rcd 10489 (1997).

⁴ The 1990 Census credits Hawthorne Town with a population of 1,049 people and the Atlas lists the same zip code for Hawthorn Town and Hawthorne.

4. IT IS FURTHER ORDERED, That the request of Bruce F. Elving for the allotment of Channel 293A at Hawthorne, Wisconsin, IS DENIED.
5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau